

## **REMARKS/ARGUMENTS**

This Amendment is responsive to the Office Action dated 1 October 2007 ("Office Action.")

Reconsideration of the captioned application as amended herewith is respectfully requested.

As provided in the Office Action:

- 1) Claim 13 stands rejected under 35 USC §112, second paragraph, as allegedly being indefinite;
- 2) Claims 1 - 6 stand rejected under 35 USC §103(a) as allegedly being unpatentable over EP 0368253 to Partain, et al. ("Partain");
- 3) Claims 7 and 13 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain in view of United States Patent No. 5,667,501 to Fowler ("Fowler");
- 4) Claims 8 - 10 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of WO 87/05517 to Nimrod, et al. ("Nimrod");
- 5) Claims 11 and 12 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of United States Patent No. 6,355,858 to Gibbins ('Gibbins');
- 6) Claims 1 – 3 and 12 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over copending Application No. 11/608,553 in view of Partain;
- 7) Claims 8 - 10 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over copending Application No. 10/579,850 in view of Partain;
- 8) Claims 8 - 10 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over copending Application No. 10/527,421 in view of Partain; and
- 9) Claims 1 – 3 and 12 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over copending Application No. 10/528,262 in view of Partain;

Claims 14 - 19 were previously cancelled, and claims 2, 3, and 4 are cancelled upon entry of this amendment. New Claim 15 is added. Support for this new claim may be found in the application as originally filed at, for example, page 5, lines 8 – 9, and as such does not add new matter into the Specification. Claims 1, 5 – 13, and 15 remain pending after entry of this amendment.

**I. The rejection of claim 13 under 35 USC §112, second paragraph should be withdrawn**

Claim 13 stands rejected under 35 USC §112, second paragraph, as allegedly being indefinite. Applicants respectfully disagree for the reasons that follow.

According to the Office Action, claim 13 allegedly lacked sufficient antecedent basis for the limitation:

the material has a free radical activity in the diphenylpicrylhydrazyl (DPPH) test for antioxidant activity as herein defined.

Applicants respectfully disagree, and submit that one skilled in the art would readily understand the metes and bounds of the language in claim 13 as amended.

The Office Action also stated that the term, "at least about" is allegedly indefinite because "what values are included in 'at least about' is [allegedly] unclear and the metes and bounds of the claims [allegedly] cannot be determined." Applicants respectfully disagree, and submit that one skilled in the art would readily understand the metes and bounds of the language in claim 13 for the reasons that follow.

According to the statute, "the specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." A claim is invalid under this provision if one can determine that those skilled in the art would not understand what is claimed. See Shatterproof Glass Corp. v. Libbey-Owens Ford Co., 758 F.2d 613, 624 (Fed. Cir. 1985) (Claims must and be "as precise as the subject matter permits" and must "reasonably apprise those skilled in the art" as to their scope.)

Applicants respectfully submit that one skilled in the art would readily understand the scope of the terms "at least about" as used in claim 13. In addition, case law supports the use of similar language in claiming inventions. See W. L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983)(use of "stretching... at a rate exceeding about 10% per second" not indefinite)(emphasis added); see also In re Ayers, 33 CCPA 874 (1946) ("The term "about" as used in the patent and in the appealed claim evidently permits of some tolerance and the use of the words "at least" before "about" in the claim does not seem to us to be a modification critical in character.")

In view of the above remarks and the amendment made to claim 13, Applicants respectfully

submit that the rejection of claim 13 under 35 USC §112, second paragraph, as allegedly being indefinite has been overcome and should be withdrawn.

**II. The rejection of claims 1 - 6 under 35 USC §103(a) as unpatentable over Partain should be withdrawn**

Claims 1 - 6 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain. Applicants respectfully disagree for the reasons that follow.

Independent claim 1 was amended to clarify that the “solid bioabsorbable substrate comprises oxidized cellulose and is selected from the group consisting of woven fabrics, nonwoven fabrics, freeze-dried sponges, solvent-dried sponges and combinations thereof.” This language was included in claim 2 and claim 4 as filed in the Preliminary Amendment.

The Office Action has failed to show where Partain discloses or suggests the use of such “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose.” Therefore, Applicants respectfully submit that the rejection of independent claim 1 under 35 USC §103(a) as allegedly being unpatentable over Partain has been overcome and should be withdrawn.

Applicants further respectfully submit that claims 2 - 6, which are dependent upon claim 1 and incorporate all of its limitations therein, are likewise also patentable over Partain for similar reasons.

**III. The rejection of claims 7 and 13 under 35 USC §103(a) as unpatentable over Partain in view of Fowler should be withdrawn**

Claims 7 and 13 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain in view of Fowler. Applicants respectfully disagree for the reasons that follow.

As set forth above in Section II., the Office Action has failed to show where Partain discloses or suggests the use of “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose” as claimed in independent claim 1. In addition, the Office Action has also failed to show where Fowler discloses or suggests the use of “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose.” Therefore, because the Office Action has failed to show where Partain or Fowler discloses or suggests at least one element in claim 1, i.e., e.g., for example, the use of such “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose,” Applicants respectfully submit that claims 7 and 13, which are

dependent upon claim 1 and incorporate all of its limitations therein, are patentable over Partain in view of Fowler. Applicants further respectfully submit that the rejection of claims 7 and 13 under 35 USC §103(a) as allegedly being unpatentable over Partain in view of Fowler has been overcome and should be withdrawn.

**IV. The rejection of claims 8 - 10 under 35 USC §103(a) as unpatentable over Partain and Fowler in view of Nimrod should be withdrawn**

Claims 8 – 10 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of Nimrod. Applicants respectfully disagree for the reasons that follow.

As set forth above in Section III., the Office Action has failed to show where Partain or Fowler discloses or suggests the use of “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose” as claimed in independent claim 1. The Office Action has further failed to show where Nimrod discloses or suggests the same. Therefore, because the Office Action has failed to show where Partain, Fowler or Nimrod discloses or suggests at least one element in claim 1, i.e., e.g., for example, the use of such “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose,” Applicants respectfully submit that claims 8 - 10, which are dependent upon claim 1 and incorporate all of its limitations therein, are patentable over Partain and Fowler in view of Nimrod. Applicants further respectfully submit that the rejection of claims 8 - 10 under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of Nimrod has been overcome and should be withdrawn.

**V. The rejection of claims 11 and 12 under 35 USC §103(a) as unpatentable over Partain and Fowler in view of Gibbins should be withdrawn**

Claims 11 and 12 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of Gibbins. Applicants respectfully disagree for the reasons that follow.

As set forth above in Section III., the Office Action has failed to show where Partain or Fowler discloses or suggests the use of “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose” as claimed in independent claim 1. The Office Action has further failed to show where Gibbins discloses or suggests the same. Therefore, because the Office Action has failed to show where Partain, Fowler or Gibbins discloses or suggests at least one element in claim 1, i.e., e.g., for example, the use of such “solid bioabsorbable substrate[s] compris[ing] oxidized cellulose,” Applicants respectfully submit that claims 8 - 10, which are dependent upon claim 1 and incorporate all of its limitations therein, are

patentable over Partain and Fowler in view of Gibbins. Applicants further respectfully submit that the rejection of claims 8 - 10 under 35 USC §103(a) as allegedly being unpatentable over Partain and Fowler in view of Gibbins has been overcome and should be withdrawn.

**V. The double patenting rejections are moot.**

At the current time, Applicants believe that the obviousness-type double patenting rejections set forth in the Office Action are moot as the subject matter of co-pending applications Serial Nos.: 11/608553; 10/579850; 10/527421; and 10/528262 have not issued into a patent.

**VI. Conclusion**

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

In the event that all of the claims are not in condition for allowance, Applicants respectfully request for an interview with the Examiner before the preparation of the next Office Action.

Respectfully submitted,

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Dated: 13 December 2007